

State of the Judiciary  
Chief Justice Michael P. Boggs, Georgia Supreme Court  
Message to the Legislature  
March 8, 2023, in Atlanta, Georgia

Lieutenant Gov. Jones; Speaker Burns; President Pro Tem Kennedy; Speaker Pro Tem Jones; members of the General Assembly; Constitutional Officers; Presiding Justice Peterson and my fellow justices; Chief Judge Rickman, Vice-Chief Judge Mercier, and the judges of the Court of Appeals; other judges here with us today; and my fellow Georgians.

I am honored to return to this esteemed chamber – The Peoples House – the place where I began my career in elective public service, to now present to you all, as Chief Justice of the Supreme Court of Georgia, my report on the state of Georgia’s judiciary.

I’d like to start with a point of personal privilege to express my most sincere gratitude to many of you here today for your steadfast friendship over the years. I also want to thank you all in this chamber for your ongoing cooperation and support that has enabled us to fulfill our constitutional obligations as the third branch of government. As I said in hearings before the Joint Budget Committees in January, you all have regularly shown that you understand and appreciate the work of our state courts and recognize the significant impact our work has on society and our democracy. It is my hope that this collaborative working spirit will continue to improve, strengthen and protect the administration of justice in Georgia and uphold the rule of law – a goal I know we all share.

Over the past three years of unprecedented challenges, the state’s judiciary has consistently demonstrated its commitment to faithfully serving the citizens of Georgia. We remain strong and resolutely focused on upholding the rule of law and administering justice swiftly, impartially, and independently - foundational tenants of our democracy and our system of justice. As a result, I’m pleased to report that the state of the judiciary is strong.

This strength is found, however, in the midst of challenges. This past year has been a period of hard work and significant recovery. Courts at every level in Georgia are emerging from the fog of uncertainty created by the COVID-19 pandemic only to be confronted with new challenges presented by crushing caseloads. And, despite the best efforts of our courts to stay as functional as possible, within the bounds of health and law, many courts have accrued a backlog of cases, both criminal and civil, that resulted from the significant delays in proceedings at all levels.

As my predecessors, former Chief Justices Harold Melton and David Nahmias, have told this body before, the backlog could take years to resolve. Unlike the Braves baseball games that were scratched from the calendar in the 2020 season never to be played again, the legal needs of Georgia citizens continued and often worsened during the pandemic. Crimes, business disputes, divorces, custody battles, and the unsettled estates of departed loved ones did not simply disappear because of a virus. They demand resolution then and now. But make no mistake, the numbers in certain parts of Georgia are truly astounding, and the resolution will

not be easy. Let me offer up just one example.

In Fulton County, where we currently sit, there are more than four thousand pending indicted felony cases. And it's critical to note that the number of felony criminal cases that were indicted during COVID is substantially lower than the number of people arrested for felonies during that same period. So, in Fulton County, in addition to the indicted felony caseload, there are almost fourteen thousand unindicted felony cases. And Fulton County is not alone as high case volumes are present in some other jurisdictions as well. Critically though, criminal cases, unlike their civil counterpart, present significant implications on the constitutional rights of the accused, pose serious speedy trial issues and affect the families of victims awaiting justice and their need for closure.

Fortunately, Governor Kemp has been responsive to the plea from courts across Georgia for help and during his first term, committed \$96 million in federal American Rescue Plan Act funds, to state courts and prosecutors, and another \$14 million to public defenders to address the backlogs of serious violent felony cases. This funding has been used for temporary space, such as renting temporary courtroom space to hold jury selections or large trials; hiring temporary personnel, including assistant prosecutors or senior judges; and upgrading and modernizing courtroom IT equipment (especially for remote proceedings). I'm pleased to report that the funds are helping. After seeing a 36.3 percent increase in serious violent felony cases between 2019 and 2021, circuits receiving ARPA grants reported a nearly 12 percent decrease in these pending cases between the end of 2021 and August 2022. A similar decrease was seen among all felony cases and all cases in general.

The number of jury trials is also recovering. After seeing a 75 percent drop in felony jury trials between 2019 and 2020, our courts saw an increase in these trials of more than 182 percent by the end of 2021 and a nearly 14 percent increase over the first eight months of 2022. There is still a long way to go, but our trial court judges are demonstrating incredible leadership in tackling this problem.

And to our trial judges, I say this: thank you. Thank you for all that you have done and continue to do, despite challenges not seen for generations. You are on the front lines in the fight for the rule of law, and we all depend on you. Your efforts reflect well on the judiciary and make us all very proud. But our work continues.

The ARPA committee is continuing its hard work implementing circuits' applications for calendar year '23 funding, and you should know that the needs are still great as we have awarded an additional \$39 million in funding to 37 judicial circuits for their remediation efforts this calendar year. On behalf of Judges throughout Georgia please know how grateful we are for this funding. It is truly making an impact on case backlogs across the state. Unfortunately, though, we have learned that money alone will not fix the problem.

As you all know, workforce challenges have permeated every sector of Georgia's economy, from private industry to health care, and our system of justice - particularly our criminal justice system is not immune. Governor Kemp has made workforce one of his primary areas of focus for Georgia, and I want you to know the courts share this focus particularly given how

workforce challenges in the judicial system continue to impede our efforts to address court backlogs.

For our court system to operate effectively and justly, we need every component at full capacity: judges, prosecutors, public defenders, court reporters, clerks, interpreters, and courtroom security. Without any one of these components, the judicial system simply doesn't work. And to be clear, our judicial system is having enormous challenges finding the workers it needs to fill the positions justice demands.

The Prosecuting Attorneys Council, which supports the district attorney's offices in each of our 50 circuits, reports that it is experiencing the highest number of job vacancies and the highest level of turnover in recent history. As of December 2022, PAC had 43 unfilled positions. Compare that to just 11 in July of 2020.

Pete Skandalakis, the executive director of PAC, sums it up like this: "Our criminal justice system is labor intensive. If we have vacancies in any of those positions, we have a standstill in cases.

And before you know it, a backlog of 20 cases becomes 40, and 40 becomes 80. We need experienced people." Pete's right.

To make matters worse, the problem is especially acute outside of the metro area and in our rural areas. For example, in Dougherty County, there are only four full-time prosecutors, when in the past, there have been at least twice as many. The circuit received ARPA grant funding in 2022 to move through its backlog of about 10 thousand pending felony cases, twenty-five hundred of which involve serious violent felonies, like murder, rape, armed robbery, and certain sex offenses - the kinds of cases where it is clearly in the public's best interest to have your most experienced prosecutors working. Despite the funding, the DA was unable to find enough lawyers interested in filling the open prosecutor positions.

Meanwhile, the number of pending criminal cases grows larger and so does the wait for defendants charged but not convicted of crimes who are sitting in local jails, awaiting indictment or trial. Of course, in our system, punishment is supposed to follow conviction, not precede it. And this pre-trial delay causes other problems, too.

While the cost of building up our legal workforce requires financial investment, it may ultimately cost less than allowing defendants to sit in jail. In Dougherty County, Chief Judge Willie Lockette estimates there are more than 200 pretrial detainees that have been in jail there for two or more years. At a cost of roughly eighteen thousand dollars per inmate, it has cost the county nearly three point seven million dollars a year to house those detainees.

As I mentioned, workforce challenges are not exclusive to prosecutors. Defendants accused of crimes who cannot afford their own attorneys still have the right to legal representation, but public defender offices are also having a hard time recruiting and retaining attorneys. Several months ago, David Lipscomb, who chairs Gwinnett County's Indigent Defense Governing Committee told local reporters that before the pandemic the county had about 130 lawyers for

defendants who couldn't afford one. During the pandemic, the county dropped down to about 80. In response, the county added one million dollars to its indigent defense budget to help recruit more. But not every county has access to those kinds of funds.

To help recruit needed public defenders, the General Assembly recently passed legislation bringing parity to starting salaries of public defenders and prosecutors. While this parity is a tool with which our state can recruit needed public defenders, significant workforce challenges persist.

In the midst of these challenges, though, I think it is important to recognize the hard and often thankless work of those prosecutors and public defenders that we do have. And to each of them, we say thank you. Our system depends on you doing your job and doing it well. Thank you for doing just that.

Of course, it's not just in the criminal arena that workforce challenges manifest. As you know, there is no right to appointed counsel for litigants in civil cases like divorce, child custody, and eviction proceedings where the consequences are often enormous. Sixty-seven of our 159 counties have 10 or fewer licensed practicing attorneys. Even worse, seven counties, all rural, have no licensed attorneys at all. Access to justice is a bedrock of our nation's judicial system, yet the basic right of access is denied to many during their most dire life challenges.

Now, some of you might think that fewer lawyers are a good thing. I won't ask for a show of hands! Indeed I recognize that the General Assembly has far fewer lawyers now than when I served two decades ago. But, as you well know, our wheels of justice depend on lawyers. Truthfully, you may not think much of lawyers until you need one, and there are plenty of folks out there who do. To me, Georgia should be a national thought-leader in promoting access to justice for its citizens—all 11 million of them—and I expect that you will hear more about this from us soon.

To be sure though, I'm so very proud of how our judiciary is leading and ensuring that the state of Georgia's judiciary remains strong—and resilient. All across Georgia, our courts, judges, and legal partners are looking for innovative solutions to complex and unique problems and along the way, improving the administration of justice for our citizens, all 11 million of them. Let me offer a few examples.

In Juvenile Court in Tifton, Judge Render Heard's courtroom was an early adopter of remote conferencing technology. He employed state-of-the-art devices to keep cases - and ultimately the lives of children - from stalling. As the pandemic has receded, Judge Heard has kept his high-tech setup so that he can continue presiding over hearings and case reviews in a more efficient way.

Now, for instance, a psychologist living in Columbus or an emergency room doctor living in Atlanta who is called on to testify doesn't have to drive hours to Tift County. Or a lawyer, who is also a working mom, doesn't have to ask for a continuance in her client's case when her own child is home sick. Or children, who are at the hearts of these cases and may be placed in homes hours away from the four-county circuit, can still participate in their hearings and be

aware of the decisions affecting their futures without missing full days of school. These are all real scenarios Judge Heard has seen and resolved with his court's adoption of technology.

Another innovation is occurring in Chatham County, where Juvenile Court Judge Roxanne Formey has founded the state's first treatment court for minor victims of human trafficking. Appropriately called HOPE Court, which stands for Healing Opportunities through Positive Empowerment, this unique court focuses on addressing the specific needs of youth and families involved in sex and labor trafficking and aims to strengthen them and their communities by providing them with the support, resources, and tools they need in order to recover and lead productive, healthy lives.

In addition, you should all be proud to hear that Georgia is one of the states taking a lead in expanding services to veterans, a population that has been historically underserved in our criminal justice system. Fortunately, Georgia judges like Cobb Judicial Circuit Judge Rob Leonard are leading the charge.

I have the pleasure of serving on the Council on Criminal Justice's Veterans Justice Commission, which is chaired by former US Defense Secretary and US Senator Chuck Hagel and includes former defense secretary and White House Chief of State Leon Panetta. We've been working to identify the unique needs of veterans who find themselves involved in our criminal justice system as well as solutions that can restore their lives and lead them back on a path of being healthy, productive citizens.

What we've found is that even though nationwide, public safety officials, prosecutors, and courts have modified their structure and objectives when addressing military veterans, only a fraction of state and local governments have established justice-involved, veteran- focused interventions. Fortunately, Georgia judges are recognizing and meeting this challenge.

Through veterans courts, eligible non-violent defendants are diverted away from our prisons and into a highly supervised, data-driven treatment program that addresses their underlying issues and creates a support network for success and stability. And as a result—and not surprisingly—recidivism rates for these high-risk but non-violent individuals are lower.

According to recent data from the Council of Accountability Court Judges, veterans courts have among the lowest recidivism rates, with just 18 percent of graduates being re-arrested for a felony offense within three years. By contrast, the recidivism rate for similar individuals who instead went to prison instead hovered between 60 and 81 percent. What's more, veterans and other accountability courts save taxpayer dollars. Veterans courts yield a saving of more than thirteen thousand dollars per participant to the state while costing less than six thousand dollars per participant. And last year alone, Georgia Veterans Courts served 337 veterans. Those courts produce real savings – both budgetarily and in lives saved. On behalf of our many dedicated accountability court judges across Georgia, thank you for your continued commitment and support.

Beyond these examples of Georgia judges improving access to justice, our state judges are also fully engaged in improving the administration of justice for our many citizens with serious

mental illness. A few points to illustrate the issue.

In the U.S. one out of every 33 adults is behind bars. You might be surprised to know that in Georgia, that number is also roughly 1 in 33. Since 1980 in Georgia the number of people going to jail has tripled and the length of sentence has increased by one hundred and sixty-six percent. I believe that much of this is attributable to deficiencies in our mental health service delivery systems.

Nationwide, nearly a fifth of jail admissions involves a person with serious mental illness. We also know that people with mental illness in the U.S. are 10 times more likely to be incarcerated than hospitalized and 19 times more likely to find a bed in the criminal justice system than at a state civil hospital. And while those with mental illnesses are generally arrested for minor crimes like criminal trespass or loitering, once incarcerated they tend to stay four to eight times longer in jail and at seven times the cost. In our own DOC, the mental health population has grown one hundred percent in the last two decades such that now nearly twelve thousand people - a full twenty-five percent of the entire incarcerated population are identified as having a mental health issue.

On top of the enormous moral and fiscal impacts, public safety is also adversely affected because we know that just a day or two in jail for this population increases their recidivism rates by forty percent.

Thankfully Governor Kemp and all of you have recognized the importance of addressing this problem in creating and supporting the work of the Behavioral Health Reform and Innovation Commission. Your efforts have ensured that Georgia continues to lead the country in thoughtfully and responsibly addressing this issue. Sincerely, I thank you all for your overwhelming support of the recommendations of the Commission and trust that you recognize that your efforts reflect well on the priorities of our state. I also want to acknowledge the critical leadership of the late House Speaker David Ralston and applaud Speaker Jon Burns for continuing this important legacy. And I want to especially recognize and thank Judges Amanda Mercier, Brenda Weaver, Kathy Gosselin, Brian Amero, and Sarah Harris for their commitment to this valuable work on behalf of our state judiciary.

Another way our court leaders are working hard to ensure that our citizens have meaningful access to justice is through our Judicial Council's Committee on Court Interpreters which recently completed reviewing and updating the rules that govern court interpreting in our state. As Georgia's population is becoming increasingly diverse, it is imperative that our state courts continue to be accessible to all. I'd particularly like to recognize my fellow Justice Carla Wong McMillian and City of Suwanee Municipal Court Judge Norman Cuadra for their efforts to lead this work.

In addition to these tremendous examples of judiciary-led initiatives, let me lift up another initiative in which our legal partners are helping Georgia's children.

Through a medical-legal partnership program, our state's legal practitioners are assisting children with significant health risks and chronic illnesses. In 2004, Atlanta Legal Aid

pioneered a health law partnership program, known as HeLP, that stationed lawyers in each of the hospitals run by Children's Healthcare of Atlanta and established a law clinic at Georgia State University to assist low-income families with legal problems that affect the health and well-being of their medically fragile children. In fact, through the work of these medical-legal partnerships, five Georgia children have received new hearts when they otherwise would not have been eligible.

HeLP lawyers work with doctors, social workers, nurses, and others to provide services where children are already receiving health care. They intervene to address underlying conditions that harm children's health, such as poor housing conditions, which can magnify chronic illness like asthma or sickle cell disease, and assist to secure necessary special education services for developmentally disabled children. They have facilitated custody changes for infants with terminal cardiac conditions that allowed them to be placed in supportive home environments and in turn to be eligible to receive life-saving heart transplants.

During 2020, HeLP lawyers worked on more than 640 cases, serving 387 unique clients. Their work resulted in \$1.2 million in measurable savings in housing, education, family law, insurance, and public benefits. I hope you will continue to find ways to support this critical work supporting Georgia's most vulnerable children.

Before I wrap up, and I promise that will be soon, I want to share with you all our Court's motto. If you've ever been inside our courtroom or watched the live stream of our oral arguments, you may have noticed a Latin phrase prominently displayed above our bench that roughly translates into "Let Justice Be Done Though The Heavens May Fall." We are reminded of that phrase every time we hold court. To me, the phrase uniquely encompasses the duty of our Judges.

Judges are called upon to interpret the law and the Constitution. It is not our duty, nor should it be, to change the law or the constitution. We do not render decisions based on our own desires or bent to our own will. Rather we follow what the statutes and the constitution require. And we solemnly respect the awesome responsibility you all have as legislators to craft and shape our laws. This is the embodiment of the separation of powers. And this is the rule of law.

However, underpinning the rule of law is the safety of our judges. Our judicial system depends on judges deciding cases without fear, this includes fear for their personal safety or the safety of their families. The Chief Justice of the United States has made court security the centerpiece of his recent annual report, stating, "The law requires every judge to swear an oath to perform his or her work without fear or favor, but we must support judges by ensuring their safety. A judicial system cannot and should not live in fear." And as Chair of the Judicial Council of Georgia, I want to give a voice to the judges across our state who have an interest in this issue and so judicial security will be an issue of focus as the year progresses. In fact, just last month our Supreme Court created a new Judicial Council standing committee on judicial security to be chaired by Justice Shawn Ellen LaGrua. The committee will be focusing on security challenges to Georgia's judges, especially outside of the courthouse. I am aware of ongoing efforts by the General Assembly on this topic and expect that we will have some further recommendations for your consideration next year. Your interest in this issue is very much

appreciated.

I'm optimistic about the year ahead of us. Our courts are making significant progress in moving cases, improving access to justice and administration of justice, and in steadfastly upholding the rule of law.

Thank you again for inviting me to speak on behalf of the Supreme Court, as well as all of Georgia's judicial branch this morning. I wish you all a productive balance of this session. May God bless you and your families. And may God bless the great state of Georgia.